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June 30, 1999

BY FACSIMILE AND FIRST-CLASS MAIL

Mary L. Cottrell
Secretary
Department of Telecommunications and Energy
100 Cambridge Street - 12th Floor
Boston, Massachusetts 02202

Re: Solicitation of Comments on "Anti-Slamming Law" D.T.E. 99-18

Dear Ms. Cottrell:

RNK is pleased to participate in the drafting of this important Rulemaking providing protection to both Massachusetts consumers and legitimate providers of telecommunications providers.

Enclosed please find the original three (3) copies of RNK, Inc. d/b/a RNK Telecom's Comments on the D.T.E.'s proposed Rulemaking regarding "slamming" of telephone services in the Commonwealth. Should you require additional information concerning this matter, please contact me at (781) 297-9831.

Sincerely,

Doug Denny-Brown
General Counsel, RNK Telecom

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

Order Instituting Rulemaking to Implement)
Certain Provisions of Massachusetts')
Anti-Slamming Law, G.L. c. 93, Section) D.T.E. 99-18
108-113 and G.L. c. 159, Section 12E)

RNK'S COMMENTS ON ANTI-SLAMMING LAW

I. INTRODUCTION

On June 10, 1999, the Department sought written comments on the proposed Rules and Regulations to 220 C.M.R. Section 13.00 et seq. to be filed no later than 5:00 p.m. on June 30, 1999. The proposed Rules should aid in the protection of Massachusetts' consumers and telecommunications providers by requiring carriers to follow certain procedures to ensure that Massachusetts consumers are not having their local and long distance telephone carriers changed without first granting the authority to do so. RNK welcomes the proposed Rulemaking as a furtherance of a smooth transition to a competitive telecommunications industry as envisioned by the Telecommunications Act, and respectfully submits the following comments.

II. INTRALATA TOLL CALLS NOT INCLUDED

In 220 C.M.R. Section 13.00 et seq. the proposed Rulemaking provides for protections against "slamming" for local and long distance (IXC and LEC) but does not provide similar protections for the potential "slamming" of IntraLATA toll call services. Consumers will

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soon have the ability to pick three carriers to provide their local, intra, and inter-state toll service. The proposed Rulemaking should be expanded to include protections to consumers for their IntraLATA toll call services for the same reasons the Rulemaking so properly seeks to protect for InterLATA and local services.

INDEMNIFICATION OF CARRIERS BY ACTS OF THIRD PARTY VERIFICATION SERVICES ("TPV") AND OTHER THIRD PARTIES

Carriers that meet their obligations as required by 220 C.M.R. 13.00 et seq. should be exempt from any liability whatsoever, or subject to punishment by the D.T.E. for the action or inaction of TPVs who have separate and distinct responsibilities under this law or liability from other parties who may have malicious or ulterior motivations for their actions. Instead, the party causing the "slam" should be responsible for any penalizing actions. To do otherwise, would unfairly and unjustly expose IXC's and LEC's to risks that are not in their control and that they have no ability to protect against.

G.L. c. 159 Section 12(E) (2) requires that TPVs operate "in a location physically separate from the IXC, LEC or telemarketing representative...(and)...is not directly or indirectly managed, controlled, directed, or owned wholly or partially, by an IXC or LEC." As an example, if a TPV makes an error that causes a "slam" or is unable to provide a LEC a recorded authorization because of the TPV's mistake or mismanagement, the LEC could be liable for an unauthorized switching. Consequently, IXC's and LEC's are liable for actions over which they have no control.

Accordingly, 220 C.M.R. Section 13.00 et seq. should be amended to protect carriers who properly follow procedures, and place punishment with the party responsible for the "slam."

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IV. BOND REQUIREMENT FOR THIRD PARTY VERIFICATION SERVICES

A bond requirement for the registration of TPVs similar to that required of professional solicitors would add further protection to Massachusetts consumers and telecommunications providers for the action or inaction of TPVs. This would add reasonable financial protections to parties who are at the mercy of TPVs by this law.

V. FINES OF \$1,000.00 TO \$3,000.00 FOR MISTAKE OR MISUNDERSTANDING IS EXCESSIVE

The purpose of a fine should be to deter the "intentional" acts of a party. The proposed Rulemaking sets fines for unintentional "mistakes" and "misunderstandings," which does little to achieve the goal of preventing intentional "slamming." However, if a carrier demonstrates a pattern of mistakes or misunderstandings due to incompetence, poor training, or sloppy management, that results in repeated

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mistakes, or misunderstandings, then subsequent fines such as the ones proposed would seem appropriate.

The fines imposed should be significant enough to deter intentional slamming and careless management that results in unauthorized change of service, but not so high that they result in punishment for occasional, unintentional mistakes and misunderstandings that are inevitable and easy to correct.

VI FORMAL HEARINGS SHOULD BE CONDUCTED AS ADJUDICATORY HEARINGS UNDER G. L. 30A

In order to provide all parties with an opportunity to be heard and fair due process, the formal hearings proposed by 220 C.M.R. Section 13.00 et seq. should be conducted as

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adjudicatory hearings, as are consumer complaint appeals. Use of the hearing process defined in 220 C.M.R. Section 13.00 et seq. could be used to clarify disagreements and provide case law for different situations that carriers could follow.

VII. D.T.E. PROVIDES NOTICE OF TIME REQUIREMENTS TO CUSTOMERS

The Department should be required to provide notice of customers' responsibilities to comply with the time components set for in both 220 C.M.R. Section 13.00 et seq. and G.L. c. 93, Section 110 (a-j) to the complaining customer in its initial request for information as set forth in Section 110 (d) and should keep records accordingly.

In addition, the language of Section 110 should state that failure to satisfy any parties time obligation set forth in Section 110 shall result in the discontinuance of any action by the D.T.E. and a dismissal of that complaint or a lack of due process.

VIII. COMPENSATION TO TPVs

G.L. c. 93, Section 12E (2) (iii) states that TPVs cannot receive commission compensation based upon the number of customers authorizations confirmed or sales confirmed. We suggest a compensation plan that pays the TPV "per call," regardless of the outcome of that call. This would eliminate any incentive on the part of the TPV to falsify authorization for their client carrier.

PROHIBITION OF USE OF INFORMATION RECEIVED BY TPVs OR CARRIER

G.L. c. 93, Section 7 (a) (3) "prohibits the TPV company from using the information gathered in (a) for any marketing purpose." We propose that this language be changed to

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"prohibits the TPV company and or carrier from using the information gathered in (a) for any marketing and or other purpose." This would provide additional protection to consumers against TPVs or carriers from using their personal information for any reason, not just marketing purposes.

INCLUDE PROVISION OF SECTION 5 OF D.T.E. 99-18 THROUGHOUT PROPOSED RULEMAKING

220 C.M.R. 13.00 et seq. allows carriers to request approval from the Department for an alternative verification system. Throughout the proposed Rulemaking, however, that option is not included when letters of agency and third party verification and recordings are mentioned. This alternative verification method should be added throughout the proposed Rulemaking wherever reference is made to letters of agency or third party verification and recordings are found.

XI REQUIREMENT OF NEW CARRIER TO COMPENSATE OLD CARRIER FOR UNAUTHORIZED SWITCHING OF SERVICE

220 C.M.R. 13.05 (1) (b) (3) states that the D.T.E. will "request" that a carrier who has changed the service of a customer of another carrier to refund the amount that the carrier would have received from the customer back to the date of the unauthorized change. We request that the word "request" be changed to "require" so as to ensure that carriers do not suffer financial losses due to the unauthorized actions of other carriers.

XII. DEPARTMENT'S RESPONSIBILITY EXPANDED

The last sentence of 220 C.M.R. 13.05 (b) states that the "...Department shall notify all parties to the dispute of the Department's determination." We request that the language be

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expanded to include the following language "...Department shall notify all parties to the dispute of the Department's determination in writing within 5 days."

XIII CONSISTENCY IN LANGUAGE

220 C.M.R. 13.05 (2) (b) states that the Department "may prohibit a carrier from selling communications services in Massachusetts..." (emphasis added). We propose that the word

"communications" be changed to "telecommunications" so as to have the language be consistent with the language in G.L. c. 93 Section 112 (c)

XIV CONCLUSION

RNK appreciates the opportunity to participate in this proceeding and hopes that its Comments are seriously considered by the Department when it creates its final draft of the proposed Rulemaking.

For RNK,

Doug Denny-Brown

General Counsel, RNK Telecom

Stephen Tessier

Legal Intern, RNK Telecom